

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

REC'D TN  
REGULATORY AUTH.

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OFFICE OF THE  
EXECUTIVE SECRETARY

IN RE: PETITION OF AT&T, MCI, SPRINT )  
AND WORLDCOM d/b/a WILTEL )  
NETWORK SERVICES FOR THE )  
COMMENCEMENT OF A RULEMAKING )  
PROCEEDING TO PROVIDE FOR THE ) DOCKET NO. 98-00097  
TERMINATION OF PRICE CAP )  
REGULATION FOR INTEREXCHANGE )  
CARRIERS AND TO AMEND RULE )  
1220-4-2-.55(2). )

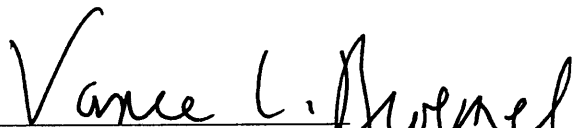
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MOTION TO FILE COMMENTS IN REPLY TO SUPPLEMENTAL COMMENTS OF  
AT&T TELECOMMUNICATIONS OF THE SOUTH CENTRAL STATES

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Comes the Consumer Advocate Division of the Office of the Attorney General and Reporter, on behalf of Tennessee consumers, and respectfully moves the Tennessee Regulatory Authority to accept the attached Affidavit of Dr. Stephen N. Brown as part of the record in docket 98-00097. The affidavit addresses issues raised in this docket in the Supplemental Comments of AT&T Telecommunications of the South Central States.

Respectfully submitted,



Vance L. Broemel, Assistant Attorney General  
Consumer Advocate Division  
Attorney General's Office  
425 5th Ave. North  
Nashville, TN 37243

CERTIFICATE OF SERVICE

I hereby certify that this document was served on parties of record by U.S. Mail or by facsimile this 25<sup>th</sup> day of September, 2000.

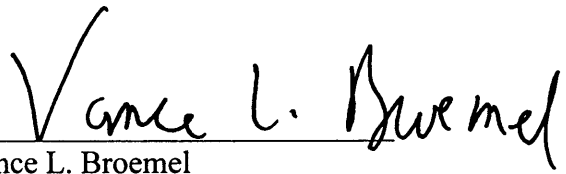
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Vance L. Broemel

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
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CARRIERS AND TO AMEND RULE 1220- )  
4-2.55(2). )

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AFFIDAVIT

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1  
2 Comes the affiant Dr. Stephen N. Brown after being duly sworn who deposes and says:

3  
4 I am Stephen N. Brown.

5  
6 I am an economist in the Consumer Advocate Division, Office of the  
7 Attorney General.

8  
9 I review utility filings and information relating to rates and rate changes  
10 and follow the economic conditions that affect the companies. I also assess  
11 and evaluate facts for the Consumer Advocate Division and other entities  
12 within the Office of the Attorney General.

13  
14 From 1986 to 1995 I was employed by the Iowa Utilities Board as Chief of  
15 the Bureau of Energy Efficiency, Auditing and Research, and Utility  
16 Specialist and State Liaison Officer to the U.S. Nuclear Regulatory  
17 Commission. From 1984 to 1986 I worked for Houston Lighting & Power  
18 as Supervisor of Rate Design. From 1982 to 1984 I worked for Arizona  
19 Electric Power Cooperative as a Rate Analyst. From 1979 to 1982 I  
20 worked for Tri-State Generation and Transmission Association as Power  
21 Requirements Supervisor and Rate Specialist. From 1979 through 1995

1 my work spanned many issues including cost of service studies, rate  
2 design issues, telecommunications issues and matters related to the  
3 disposal of nuclear waste.  
4

5 I have an M.S. in Regulatory Economics from the University of Wyoming,  
6 an M.S. and Ph.D. in International Relations with a specialty in  
7 International Economics from the University of Denver, and a B. A. from  
8 Colorado State University.  
9

10 I am a past member of the NARUC Staff Committee on Management  
11 Analysis, a past trustee of and a member of the Board for the Automatic  
12 Meter Reading Association, and a current member of the National  
13 Association of Business Economists.  
14

15 I am providing this affidavit in response to: Supplemental Comments of  
16 AT&T Communications of the South Central States provided to the  
17 Tennessee Regulatory Authority on August 11, 2000 in Docket No. 98-  
18 00097 - Notice of Rulemaking: Rule 1220-4-2.55(2)(“IXC Rules.”)  
19

20 I respectfully submit that AT&T’s supplemental comments (SC) are  
21 amorphous and inconsistent, lacking a structure of economic facts and  
22 reasoning required to support the company’s conclusion that  
23 “...no...factually justified basis exists for continuing the system of price-  
24 cap regulation either in the existing IXC rules or as proposed by the staff  
25 [SC, page 15].” The Tennessee Regulatory Authority should disregard the  
26 comments when the agency makes its final decision in this Docket.  
27

## 28 ASSERTION OF COMPETITIVE HARM IS NOT SUBSTANTIATED

### 29 The Assertion.

30  
31  
32 The Supplemental Comments (SC) assert that the current and proposed rules do  
33 competitive harm to the IXCs:  
34

35 “the adoption of the IXC rules...place...the IXCs...at an intolerable,  
36 unfair disadvantage [SC, page 1].”  
37

38 “Only the certificated IXCs...are adversely affected by this  
39 situation [SC, page 5].”  
40

41 “Only AT&T, WorldCom and Sprint...would be subject to  
42 such regulation pursuant to staff’s proposal [SC, page 8].”

1                   “...the three regulated IXC...face a host of competitors  
2                   unregulated as to tariffs and prices [SC, page 15].”  
3

4                   The competitive-harm assertion rests on a “leap-frog” logic: Since T.C.A.  
5                   §65-4-201(c) directs the TRA to “grant a certificate of convenience and  
6                   necessity to a competing telecommunications service provider,” the  
7                   company leaps to the assertion that each and every petitioner receiving  
8                   such a certificate must be a competitor and must be operating in the same  
9                   market as the IXCs. For example, the company asserts: “The rules  
10                  regulating...the IXCs... are not applicable to other carriers  
11                  hav[ing]...authority under Chapter 408 to provide...the same services [as  
12                  the IXCs] [SC, page 7].”  
13

14                  The Failure to Substantiate.  
15

16                  Despite the claims of competitive harm, the company admits it is unable to  
17                  provide supporting evidence:  
18

19                         “...an indeterminable volume of interLATA services  
20                         are[sic] being rendered in Tennessee outside the scope of  
21                         the present rules governing the regulation of the IXCs [SC,  
22                         page 10].”  
23

24                         “The result is another indeterminable volume of interLATA  
25                         services being rendered in Tennessee without being subject  
26                         to regulation as to rates and tariffs [SC, page 12].”  
27

28                         “AT&T is not aware of any means of determining from  
29                         public records what networks are actually being “resold” by  
30                         any seller [SC, page 13].”  
31

32                  These comments continue Professor Thomas Beard’s theme began a year  
33                  ago in this Docket when he made comments on behalf of AT&T:  
34

35                         “...it appears impossible to obtain reliable sales share data  
36                         for Tennessee instate, interlata toll calls...[Beard affidavit,  
37                         par. 18].”  
38

39                  The claim of competitive harm is not substantiated because the company  
40                  provides no evidence that business has been lost or will be lost.  
41  
42

1 WHAT IS AN "INDETERMINABLE VOLUME?"

2  
3 Any service that can not be measured can not be considered as a real  
4 service. Therefore, the TRA should consider the real volume of an  
5 "indeterminable volume" as zero.  
6

7 THE SERVICES PROVIDED BY AN IXC

8  
9 The company fails to mention that the proposed rules define two service  
10 categories, Residential and All Other. While the company rails against  
11 "price caps," it does not admit that the "cap" is limited to residential  
12 services, nor does the company admit that the cap applies to the average-  
13 net-revenue-per-minute for residential services. Furthermore, the  
14 company fails to admit that it has complete flexibility to offer, package  
15 and price "all other services" because they have no cap. Therefore, the  
16 company's comments must be aimed at residential services, but the  
17 company has no evidence that non-IXC competitors offer these services in  
18 any volume that is not "indeterminable."  
19

20 THE CAP'S EFFECT WHEN COMPETITION IS AN "EFFECTIVE  
21 REGULATOR"

22  
23 The company's states that "competition is an effective regulator of the  
24 rates of interLATA long distance service [SC, page 14]." If this is true,  
25 then competition causes the company to pass on to residential users the  
26 savings created when the FCC orders reductions in access charges.  
27

28 THE CAP'S EFFECT WHEN COMPETITION IS AN INEFFECTIVE  
29 REGULATOR

30  
31 In the event competition is not an effective regulator, the cap lead to the  
32 same result as if competition were an effective regulator: the proposed  
33 rule causes the company to pass on to residential users the savings created  
34 when the FCC orders reductions in access charges.  
35

36 THE ONLY PRICE REDUCTIONS RESIDENTIAL CONSUMERS CAN  
37 EXPECT ARE REDUCTIONS IN ACCESS CHARGES

38  
39 The company's unhappiness with the proposed rules, coupled with the  
40 certainty by all parties that access-charge reductions will occur, clearly  
41 signals the company's wish to capture access-charge reductions for itself.  
42 The company can do this for "All Other Services." However, the

company's targeting of Residential Services clearly suggests the company views these services as price-inelastic, meaning the company does not expect its residential-service revenue to grow as quickly as prices fall.

But falling prices are supposed to be one result of competitive markets, as well as a source of consumer benefits. The company's strenuous objections suggest it believes itself well informed about the nature of the in-Tennessee interLATA residential services market, and that the market is inelastic. In this situation the only price reduction that most residential consumers can look forward to from any provider is the reduction in access charges, even if the market is competitive. The proposed IXC rules place this single benefit in the hands of residential consumers rather than in the revenue accounts of service providers.

#### THE REGULATION OF IXCS' RESIDENTIAL SERVICES IS AN EFFECTIVE MEANS OF REGULATING THE RESIDENTIAL RATES AND TARIFFS OF RESELLERS

The company asserts "there is no longer any basis for the original concept that the regulation of the underlying carrier obviates any need to regulate the rates and tariffs of resellers [SC, page 13]." To support this claim, the company says "Numerous reseller applications have indicated that the applicant would be 'reselling' networks of carriers other than, or in addition to, one of the three certificated IXCs.[SC, page 12]." This statement is insufficient support because it allows for the possibility that resellers are selling large portions of the IXC's networks and nil or "indeterminable" portions of nonIXC networks. Furthermore, the company fails to specify the services being sold and has already described sales volumes as "indeterminable."


The lack of specifics regarding services is a critical fault because the proposed rules define two service categories, Residential and All Other. The company argues that T.C.A. §65-5-208(b) compels the TRA to "exempt services from the rate provisions of Chapter 5, Title 5 [SC, page 1]," despite the Code's reference to incumbent local exchange telephone companies.

But if the TRA considers this claim to have merit in the context of IXC rules, then the TRA should attach the same merit to that portion of T.C.A. §65-5-208(b), which says "The authority shall in any event exempt a telecommunications service...[emphasis added]," which clearly directs exemptions to be granted on a service-by-service basis.

1  
2 However, the company's SC sheds no light on the state of competition for  
3 residential services, other than saying such services are provided in  
4 "indeterminable" volumes. On the other hand, the IXC's provide  
5 interLATA residential services in volumes that are determinable and that  
6 represent, by far, the major portion of such services sold in Tennessee.  
7 Also, residential consumers are rational when making economic decisions.  
8 Coupling these two facts to each other means resellers who fail to pass on  
9 access charge reductions to residential consumers should lose customers to  
10 the IXC's, assuming the resellers are prevented from imposing penalties on  
11 consumers who terminate. Therefore, even in the presence of  
12 "indeterminable" volumes more than zero, regulation of IXC's' residential  
13 services is an effective means of regulating the residential rates and tariffs  
14 of resellers.  
15

16 The company's assertion that "there is no longer any basis for the original  
17 concept that the regulation of the underlying carrier obviates any need to  
18 regulate the rates and tariffs of resellers [SC, page 13]" is unfounded.


Further the affiant sayeth not.

  
Stephen N. Brown

State of Tennessee  
County of Davidson

Before me, the undersigned authority, duly commissioned and qualified in and for  
the State and County aforesaid, personally came and appeared Stephen N. Brown, who,  
being by me first duly sworn and deposed made the statement above.

Sworn to and subscribed before me this  
25<sup>th</sup> day of September, 1999.

  
Teresa A. Harris  
Notary Public

My commission expires January 25, 2003